

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \* CIVIL ACTION  
EFRAT UNGAR NO. 00-105L  
Plaintiff

VS. FRIDAY,  
APRIL 11, 2003

PALESTINIAN AUTHORITY  
Defendant  
\* \* \* \* \* Providence, RI

HEARD BEFORE THE HONORABLE RONALD R. LAGUEUX  
SENIOR JUDGE  
(MOTIONS)

A-P-P-E-A-R-A-N-C-E:

For the Plaintiff: David J. Strachman, Esquire  
McIntyre, Tate, Lynch & Holt  
321 South Main Street - Suite 400  
Providence, RI 02903

For the Defendant: Ramsey Clark, Esquire  
Lawrence W. Schilling, Esquire  
Ramsey Clark & Lawrence W. Schilling  
Law Offices  
36 East 12th Street  
New York, NY 10003

Deming E. Sherman, Esquire  
Edwards & Angell  
2800 Financial Plaza  
Providence, RI 02903

Court Reporter: Judith L. Montie  
203 Federal Courthouse  
1 Exchange Terrace  
Providence, RI 02903

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FRIDAY, APRIL 11, 2003

MOTIONS

THE COURT: Good morning, everyone.

ALL: Good morning, Your Honor.

THE COURT: The matter before the Court is Civil Action 2000-105L, the Estate of Yaron Ungar and others versus the Palestinian Authority and others.

The matter is here on the motion of the Palestinian Defendants for reconsideration and Plaintiff's motion to strike certain portions of the memoranda in support of that motion for reconsideration.

Will the attorneys please identify themselves for the record.

MR. STRACHMAN: David Strachman for the Plaintiffs.

MR. CLARK: Ramsey Clark.

MR. SCHILLING: Deming Sherman and Larry Schilling for the Defendants, Your Honor.

THE COURT: I will first hear the motion for reconsideration.

MR. CLARK: Thank Your Honor for setting this motion. We were quite concerned as our recent letter to you --

THE COURT: I am sorry. I can't hear you. You'll have to keep your voice up.

1 MR. CLARK: I have a bad cough. I'll do  
2 my best. I said we appreciate your scheduling this  
3 motion for reconsideration because as our recent letter  
4 indicated --

5 THE COURT: They get lost in the cracks.  
6 I am sorry to say I wasn't aware that such a motion was  
7 pending and my calender clerk had sent whatever pending  
8 motions there were to the Magistrate/Judge. But this  
9 was not among them of course and it wasn't until I  
10 received that letter that I realized that this motion  
11 was pending so I set it down for hearing. I would have  
12 set it down for hearing immediately if I had known about  
13 it.

14 MR. CLARK: You did indeed and we  
15 appreciate that. I also have to apologize for being  
16 late. The train was about 20 minutes late this morning.  
17 The weather in New York was bad as promised last night  
18 so we didn't think we should fly.

19 This motion for reconsideration is  
20 of great importance to the people of Palestine who seek  
21 to have a determination of whether their Government, as  
22 they see it, is immune for the various reasons asserted  
23 and the Court has previously passed on, the November 5  
24 decision of last year. We move for reconsideration in  
25 large part because we felt that the Appellate Court

1 should have a full review of all of the issues by Your  
2 Honor. We had filed a motion on January 30 of 2002, in  
3 which we sought leave of the Court to further state the  
4 defenses and the material in support of them. We were  
5 particularly anxious to put in a matter that was not  
6 before the Court because it had been not fully briefed  
7 by the parties on the motion to dismiss.

8 THE COURT: I beg to differ. The whole  
9 issue of sovereign immunity was thoroughly briefed and  
10 thoroughly argued on the motion to dismiss and I made a  
11 thorough and complete ruling on that subject. If you  
12 wanted to appeal that, you could have appealed. And it  
13 is unnecessary for me to grant a motion to assert  
14 affirmative defenses because you should have asserted  
15 your affirmative defenses when you filed an answer. You  
16 didn't file an answer and you are now in default; that's  
17 the status of this case right now.

18 MR. CLARK: That's part of the status of  
19 this case right now. It has got some other elements.  
20 Our motion of January 30, 2002 sought to present to the  
21 Court law on the reasons that this question of sovereign  
22 immunity was not a defense but it is something that must  
23 be acted on first. And that on that issue we think we  
24 have right of appeal.

25 THE COURT: Then you should appeal

1 because I have ruled on it. I have ruled twice on that  
2 subject. I ruled in the first case, in my first opinion  
3 that there was no diplomatic immunity and I ruled in my  
4 second decision that there was no sovereign immunity;  
5 that the PA and the PLO do not amount to a foreign state  
6 under the statute. It can't be any clearer than that  
7 and if you think you have a right to appeal, you should  
8 go up to the first Circuit Court of appeals. I doubt  
9 that they'll hear you but that's your prerogative.

10 MR. CLARK: We had cited three cases in  
11 motion for reconsideration that we think established the  
12 right to appeal and we more recently cited to the Court  
13 the case of in re: *Minister Papandreou*, 139 F.3d 247, it  
14 is a District of Columbia Court of appeals because most  
15 of these cases come up there and the Court there --

16 THE COURT: That's not for me to  
17 consider. I don't care whether you have the right to  
18 appeal or not. I have made my decision and I am  
19 satisfied with it and there it is and this case will  
20 continue. If you think you have the right to appeal,  
21 you just go right up Route 95 to Boston and file your  
22 appeal. And see if they will hear you. That doesn't  
23 concern me.

24 You have made a motion for me to  
25 reconsider my decision on sovereign immunity and I've

1 made a thorough and complete decision considering every  
2 one of your arguments and my decision is that there is  
3 no sovereign immunity and that's my decision. And it  
4 stands.

5 MR. CLARK: Well, we won't bother to  
6 reargue that.

7 I would like to point out about the  
8 *Papandreou* case because Your Honor might not have  
9 reviewed the submission of it. It says and this is  
10 important cross the board on the issues that are before  
11 you today. "Sovereign immunity is an immunity from  
12 trial and the attendant burdens of litigation and not  
13 just a defense to liability on the merits."

14 THE COURT: I am well-aware of that  
15 concept, well-aware of it and that's why I dealt with  
16 the issue of sovereign immunity on the motion to  
17 dismiss. You submitted it to me. Your partner  
18 Mr. Schilling made an extensive argument on it and there  
19 was an extensive memorandum on it and I considered every  
20 facet of it.

21 MR. CLARK: Well, we did have a motion  
22 pending at that time, January 30, 2002 seeking leave to  
23 file more extensive papers simply because we thought  
24 that they should be before you and that motion was never  
25 acted on.

1 THE COURT: There was no need to act on  
2 it because I had all the material that I needed when you  
3 argued the motion to dismiss. That was an issue and I  
4 dealt with it.

5 MR. CLARK: The *Papandreou* case is a  
6 mandamus, Your Honor, and it's a mandamus in a case in  
7 which the District Court in the District of Columbia was  
8 proceeding to discovery toward trial having acted on  
9 immunity in a way that did not prevent the case from  
10 going to trial, to proceedings and the Court of Appeals  
11 there said that the infliction of those burdens of  
12 litigation may compromise a Government or non-  
13 Government just as clearly as would an ultimate  
14 determination of liability. For that reason, a trial  
15 Court's denial of an immunity defense entitles the  
16 Defendant to an immediate appeal under *Cohen*, the  
17 Supreme Court case, *Cohen versus Beneficial Industrial*  
18 *Finance Corporation*. Deprivation of the right not to be  
19 tried satisfies the requirement of being effectively  
20 unreviewable on appeal for a final judgment. The scope  
21 of jurisdictional discovery under the FSIA poses the  
22 same issue. Here, too, we think immediate review is  
23 appropriate. Now --

24 THE COURT: Go ahead, appeal. Appeal to  
25 the First Circuit.

1 MR. CLARK: If that's your -- if you  
2 don't want any more material, then we request you,  
3 respectfully, to deny our motion for reconsideration and  
4 we'll --

5 THE COURT: That's what I plan to do.

6 MR. CLARK: Very good.

7 THE COURT: Deny your motion for  
8 reconsideration. Appeal if you want to.

9 MR. CLARK: Okay.

10 THE COURT: We'll see whether the First  
11 Circuit takes it.

12 MR. CLARK: We'll take that motion as  
13 denied and --

14 THE COURT: I will deny it. I will deny  
15 it on the record.

16 MR. CLARK: Do you want me to address  
17 this motion to strike as well?

18 THE COURT: I'll hear from the other side  
19 first on the motion to strike.

20 MR. CLARK: Thank you, Your Honor.

21 THE COURT: Mr. Strachman, do you want to  
22 be heard on the motion for reconsideration?

23 MR. STRACHMAN: I don't think I need to,  
24 Judge, in light of the representations --

25 THE COURT: A wise decision. I will deny



1 the motion for reconsideration. And I will deny the  
2 part of it that asks for a stray pending appeal. This  
3 case is going forward whether or not there is an  
4 interlocutory appeal.

5 I will hear you on your motion to  
6 strike.

7 MR. STRACHMAN: Thank you, Your Honor.

8 Having denied the motion for  
9 reconsideration, Your Honor, and also having  
10 Magistrate/Judge Martin deny the motion to reconsider  
11 the discovery order, our motion to strike is in a little  
12 bit somewhat different posture, now. In other words, we  
13 filed a motion to strike portions of two motions. Both  
14 of those motions have now been denied. But if we could  
15 simply indulge the Court to make a ruling on the motion  
16 to strike even though most of the motions have been  
17 denied by the Defendant where the scandalous materials  
18 have been included because we feel that it's  
19 inappropriate and I think we need some direction from  
20 the Court as to whether the life or activities or the  
21 alleged activities of a spouse, of a lawyer living in  
22 Israel who has never set foot in Rhode Island, not  
23 involved in this case, whether those types of issues,  
24 representations even belong in this courtroom and I know  
25 that at some level it is somewhat moot in the sense

1 because both of the motions have been denied at this  
2 point but we would still ask that these, that our motion  
3 be granted and that Your Honor strike those materials so  
4 that the Defendants can be told once and for all that  
5 the case is going to go forward on the merits. We are  
6 not going to litigate the political views of spouses of  
7 lawyers who are not even involved in this case and that  
8 the issues that are before the Court are whether in fact  
9 the PA and the PLO can be held responsible for the  
10 murder of Ungar.

11 So to that extent, Your Honor, I  
12 would like to -- based on what we filed and based on our  
13 motion and based on the memorandum that we cite some  
14 significant authority from this jurisdiction and others  
15 which talk about litigating the political beliefs of  
16 lawyers and those obviously involve cases of lawyers who  
17 are involved in the case, not spouses of lawyers who  
18 aren't involved in the case. So it is even all the more  
19 so that these materials should be stricken from the  
20 file. They have no place in this docket. They have no  
21 basis for clogging up this docket, taking the  
22 Plaintiffs' time or the Court's time or allowing the  
23 case to be diverted to political beliefs of any counsel  
24 but certainly not spouses of counsel. Thank you.

25 THE COURT: Your response?

1 MR. CLARK: Briefly, Your Honor, we  
2 assume that this is moot now because of the decision on  
3 motion for reconsideration but that aside, the Plaintiff  
4 misunderstands the nature and the purpose of the  
5 allegations that he seeks to strike. They have to do  
6 specifically with our right, we believe, not to be  
7 forced to litigate, not to be forced to present an  
8 answer in depositions, not to engage in the pursuit of  
9 settling this or determining the issues in this  
10 controversy until sovereign immunity has been decided.  
11 What you see is that these allegations, that we haven't  
12 made the allegation, we have simply quoted the  
13 allegations that he wants to strike from lawyers who  
14 have been associated in some degree in the case  
15 apparently or claim that they have been.

16 THE COURT: It is a personal attack on  
17 the Plaintiffs' attorneys in this case. What possible  
18 justification is there for making a personal attack on  
19 Plaintiffs' attorneys?

20 MR. CLARK: Your Honor, all we're doing  
21 is reciting what the attorney has been reported to say  
22 in the press to show that their effort in this case is a  
23 political effort to attack the PLO and the PA and that's  
24 the very sort of thing we are not supposed to have to  
25 get into until immunity has been finally decided. If

1 you read *Papandreou*, there is no question about it and  
2 there was mandamus granted in that case. The other  
3 three cases make it clear that we have cited but you  
4 have decided that. If you want to go ahead and do this,  
5 even though it is moot, decide it if you want to but the  
6 clear reason and the clear justification for it and the  
7 thing that makes it proper, is that it shows that while  
8 we have sovereign immunity, we are being politically  
9 attacked by these people and had there been sovereign  
10 immunity, we wouldn't be subjected to that.

11 I would ask this, may it please the  
12 Court, for you to consider a stay pending our ability to  
13 obtain a stay if they are willing to grant it in the  
14 First Circuit.

15 THE COURT: I have already denied that.  
16 I said there will be no stay of this proceeding --

17 MR. CLARK: This is a different --

18 THE COURT: -- pending any appeal.

19 MR. CLARK: If you denied it, that's all  
20 we need.

21 THE COURT: This case is going forward.

22 MR. CLARK: Thank you, Your Honor.

23 THE COURT: What I have before me on a  
24 motion to strike is very precise. Plaintiffs' counsel  
25 request that I strike section 2C in toto and the second

1 sentence only of 2D in the memorandum in support of the  
2 motion for reconsideration and the document which is a  
3 press clipping attached to the motion. There is a  
4 second part to the motion to strike but that motion is  
5 not before me. That motion for reconsideration was not  
6 before me. That was before Judge Martin. So I will not  
7 deal with that matter.

8                   It is obvious to me that this  
9 portion of the memorandum is a personal attack on  
10 Plaintiffs' attorneys. And that it is totally  
11 irrelevant to any issues in this case. This case is a  
12 tort case. Pure and simply. It is not a political  
13 case. The issue in this case is whether the PLO and the  
14 PA are, at least, partially responsible for the brutal  
15 killing of Mr. Ungar, an American national in Israel and  
16 whether those two Defendants will be required to respond  
17 in damage. I have ruled that this case is properly  
18 before this Court and that there is no defense of  
19 sovereign immunity. And that's all that's before this  
20 Court. And this case will go forward and be resolved.

21                   As I have indicated, if Defendants'  
22 counsel think that there is a right to appeal that  
23 determination, then they can take their appeal to the  
24 First Circuit. Because I think these statements that  
25 are contained in this memorandum have no place in this

1 trial, in this case, or any part of this case, I grant  
2 the motion to strike and I issue a warning that if there  
3 is further conduct of this kind in this case, there will  
4 be some dire consequences. The first consequence will  
5 be the revocation of pro hac vice status by these  
6 attorneys. And the second will be monetary sanctions.  
7 A word to the wise should be sufficient. Enough said.

8 Draft an order on all the matters we  
9 have dealt with this morning, Mr. Strachman.

10 MR. STRACHMAN: Yes, Your Honor. Thank  
11 you.

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13 (COURT ADJOURNED)  
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C E R T I F I C A T I O N

I, Judith L. Montie, do hereby  
certify that the foregoing pages are a true and  
accurate transcription of my stenographic notes in  
the matter before Ronald R. Lagueux, Senior Judge.

Judith L. Montie  
Judith L. Montie

April 16, 2003